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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

In re U.S., et al., a Person Coming Under
the Juvenile Court Law.

H046308
(Santa Clara County Super. Ct.
Nos. 18JD025359;18JD025360)

SANTA CLARA COUNTY
DEPARTMENT OF FAMILY AND
CHILDREN'S SERVICES,

Plaintiff and Respondent,

v.

I.G.,

Defendant and Appellant.

I.G. is the biological father of 11-month-old V.S., and the presumed father of three-year-old U.S. He appeals the order declaring the children dependents of the juvenile court and removing them from Mother and Father's custody. Father contends that the evidence was insufficient to support the jurisdictional finding that the children suffered or were at substantial risk of suffering serious emotional harm under Welfare and Institutions Code section 300, subdivision (c).¹ Father does not challenge the juvenile court's findings under section 300, subdivision (b), that the children suffered or

¹ All further unspecified statutory references are to the Welfare and Institutions Code.

were at substantial risk of suffering serious physical harm due to Mother's untreated substance abuse and the parents' verbal arguments.

For the reasons set forth below, we exercise our discretion to address the substantial evidence challenge to the finding of jurisdiction based on section 300, subdivision (c). We conclude that the evidence in the record does not support the juvenile court's finding that the children were experiencing serious emotional harm or that there was a substantial risk that the children would suffer serious emotional harm in the future as a result of the parents' verbal arguments. We therefore order that the true findings supporting jurisdiction under section 300, subdivision (c), be stricken from the jurisdictional order.

I. STATEMENT OF THE FACTS AND CASE

In June 2016, Mother and her infant, U.S., both tested positive for methamphetamine at the child's birth. The Santa Clara County Department of Family and Children's Services (Department) was notified and contacted Mother. She admitted that she used methamphetamine, but said that she had been clean for six years until a few days before the delivery, when she used methamphetamine again. Mother's family did not know about her methamphetamine use at the time. U.S.'s father was incarcerated out-of-state, and was not involved with Mother at the time of the child's birth because the couple had separated due to father's violence toward Mother.

At the Department's suggestion, Mother agreed to participate in a voluntary outpatient drug treatment program and to be tested for drug use. Mother tested negative for drugs, but did not participate in a drug treatment program.

On August 6, 2018, the Department received a report that Mother and her infant, V.S., tested positive for methamphetamine two days earlier. Mother was interviewed at the hospital and admitted to drinking alcohol and using methamphetamine while she was pregnant with V.S. She told the social worker that Father worked in construction and supported their family. According to Mother, Father did not know about her drug use.

The social worker interviewed Father at the hospital. He said that he and Mother lived together on and off, and he had just moved into Mother's apartment shortly before V.S. was born. The couple had been in a relationship for over a year. Father knew that Mother drank alcohol while she was pregnant, but did not know that she used methamphetamine. Father said that he drank alcohol socially, and after work.

On August 7, 2018, Mother and Father agreed to participate in informal supervision services and signed a safety plan.

On August 21, 2018, social workers went to the family's apartment for an unannounced home visit. When they arrived, social workers found Mother had been outside for about five minutes while her children were in the apartment alone sleeping. Mother agreed that she would go to the Department the next day to attend a child and family team meeting. Mother failed to attend the meeting. Two days later, when social workers went to Mother's apartment, Mother would not open the door until the police arrived and conducted a safety check. Mother tested positive for amphetamine and methamphetamine.

On August 23, 2018, social workers conducted an emergency child and family team meeting. Mother, Father and the maternal relatives attended the meeting. At the meeting, Mother agreed to enter an inpatient drug treatment program, and to stay at the maternal grandmother's house during the day while Father was at work until she could enter the program.

Mother missed her appointment to move into the inpatient drug treatment program. The maternal grandmother spoke to the social worker, and told her that Mother and Father argue constantly, and that Mother sometimes slaps Father in front of the children. The grandmother also said that Mother was not following the agreed upon safety plan, and might leave the state with the children. The grandmother reported that both Mother and Father care for the children while they are under the influence of alcohol.

The Department filed a first amended petition on August 31, 2018, alleging that U.S. and V.S. came within the jurisdiction of the juvenile court pursuant to section 300, subdivisions (b) and (c). Regarding subdivisions (b-1) through (b-4), the petition alleged that the children had suffered, or were at substantial risk of suffering serious risk of harm or illness due to Mother's untreated and ongoing substance abuse, failure to participate in voluntary services, and use of alcohol and drugs while pregnant with the children. As to subdivision (b-5), the petition alleged that Father had taken no steps to ensure the safety and well-being of the children, and engaged in "mutually combative verbal arguments" with Mother in the presence of the children. Subdivision (c-1) alleged that the children were suffering, or were at substantial risk of suffering serious emotional damage because of Mother and Father's mutually combative verbal arguments in the children's presence. The petition alleged that U.S.'s biological father did not take steps to ensure the safety of U.S. and that his whereabouts were unknown.

At the detention hearing on September 4, 2018, Mother and Father appeared and the court ordered U.S. and V.S. detained. The juvenile court found Father to be the presumed father of both children pursuant to Family Code section 7611, subdivision (d). Mother and Father were ordered to return to court for a jurisdictional hearing on September 24, 2018.

Mother and Father did not attend the September 24, 2018 hearing. The hearing was continued to October 18, 2018, which the parents also failed to attend.

The Jurisdiction/Disposition report dated September 24, 2018, stated that the children were in good condition both physically and mentally. With regard to the children's mental and emotional status, the report stated: "There have not been any concerns related to [U.S.'s] and [V.S.'s] mental or emotional status. [U.S.] is a happy and calm toddler. The foster parents have indicated that he has behaved really well with them and have had no problems so far. [V.S.] is also a happy baby and adjusted to

placement well. [U.S.] and [V.S.] appear to be bonding with [Mother] and [Father] during visits; the parents attend and meet the children's needs."

The report also stated that Father met with the social worker at the Department on September 14, 2018. Father admitted that he had consumed alcohol right before the meeting. Father took a drug test that was positive for methamphetamine. Father denied using illegal drugs, and said that the test was positive because he took cold medicine earlier in the week. Father told the social worker that he and Mother do not fight, and that he has never hit or had verbal disagreements with Mother. He said that the maternal grandmother was lying about domestic violence and arguments, because she was angry with Mother.

At the October 18, 2018 jurisdiction hearing, the juvenile court sustained the first amended petition, found that the children came within the court's jurisdiction pursuant to section 300, subdivisions (b), (c) and (g), and removed the children from the parents. The court ordered the proposed case plan and recommendations for reunification services, including a domestic violence assessment, completion of a parenting class, participation in random weekly drug testing, weekly 12-step meeting attendance, and completion of a substance abuse treatment program. An interim review hearing was set for January 17, 2019, and a six-month review was set for April 11, 2019.

Father filed a timely notice of appeal from the jurisdictional and dispositional findings and orders on October 18, 2018.

II. DISCUSSION

Father asserts that the juvenile court erred in sustaining the petition under section 300, subdivision (c), because the evidence was insufficient to show that the children suffered, or were at risk of suffering, severe emotional harm. He does not contest the juvenile court's other jurisdictional findings or the court's dispositional order.

A. Justiciability

The Department asserts that this appeal is moot, because Father has not presented a justiciable issue for appellate review. “When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451 (*Alexis E.*).

In general, “a single jurisdictional finding supported by substantial evidence is sufficient to support jurisdiction and render moot a challenge to the other findings.” (*In re M.W.* (2015) 238 Cal.App.4th 1444, 1452 (*M.W.*), citing *Alexis E.*, *supra*, 171 Cal.App.4th at p. 451.) Appellate courts have discretion to consider the merits of a challenge to jurisdictional findings and “often do so when the finding ‘(1) serves as the basis for dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or (3) ‘could have other consequences for [the appellant], beyond jurisdiction’ [citation].’ [Citations.]” (*M.W.* at p. 1452.)

Father acknowledges that because he does not challenge the section 300, subdivision (b) findings, appellate reversal of the section 300, subdivision (c) finding would not alter the juvenile court’s jurisdiction over the children. He nonetheless urges this court to exercise its discretion and consider the merits of his substantial evidence challenge, asserting the juvenile court’s error could prejudice him in the future if he is involved in another dependency or child custody proceeding. Father also asserts that the true finding might erroneously label him as a perpetrator of domestic violence.

The Department disputes that Father has identified any prejudice or future impact from the challenged jurisdictional finding and argues the appeal may be dismissed for

lack of “a present, concrete, and genuine dispute as to which the court can grant effective relief” (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1489.)

This court addressed a justiciability challenge under similar circumstances in *In re D.P.* (2015) 237 Cal.App.4th 911 (*D.P.*). In that case, D.P. was an infant who had been exposed to his parents’ constant arguing and his father’s alcohol abuse. In addition, the baby’s siblings had been physically affected by domestic violence in the household. (*Id.* at pp. 915-916.) D.P.’s mother claimed that there was no substantial evidence to support the jurisdictional finding that D.P. was at substantial risk of suffering serious emotional damage (§ 300, subd. (c)); however, she did not contest the other jurisdictional findings based on failure to protect and sibling abuse (§ 300, subds. (b), (j)). (*D.P.* at p. 913.) We considered the appeal on the merits because “the finding on the section 300, subdivision (c) allegation could potentially affect future dependency proceedings.” (*Id.* at p. 917.)

Similarly, here, the finding under section 300, subdivision (c), if erroneous, has the potential to prejudice Father in the current or future dependency or child custody proceeding. (See *D.P.*, *supra*, 237 Cal.App.4th at p. 917; *In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763.) Accordingly, we will exercise our discretion and consider the merits of Father’s appeal.

B. Substantial Evidence

The juvenile court may take dependency jurisdiction over a child only if the court finds the child to be a person described by one or more of the section 300 subdivisions. (*In re D.C.* (2011) 195 Cal.App.4th 1010, 1014.) “The basic question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm.” (*In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1134.) The Department has the burden of establishing the facts supporting jurisdiction by a preponderance of the evidence. (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

“ ‘On appeal, the “substantial evidence” test is the appropriate standard of review for both the jurisdictional and dispositional findings. [Citations.]’ [Citation.] [¶] Thus, ‘we must uphold the court’s [jurisdictional] findings unless, after reviewing the entire record and resolving all conflicts in favor of the respondent and drawing all reasonable inferences in support of the judgment, we determine there is no substantial evidence to support the findings. [Citation.] Substantial evidence is evidence that is reasonable, credible, and of solid value. [Citation.]’ [Citation.]” (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1022.)

A child described by section 300, subdivision (c) “is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian” The Department’s petition in this case alleged: “c-1 [:] The mother and [] father, [I.G.] engage in mutually combative verbal arguments in the presence of the children in the family residence, while under the influence of alcohol. The children’s ongoing exposure to conflict within the family home places them at significant risk of future harm.”

Verbal arguments between parents are often not enough to justify jurisdiction under section 300, subdivision (c). For example, in *In re Brison C.* (2000) 81 Cal.App.4th 1373, the minor was “caught in the crossfire of his parents’ frustration and anger with each other.” (*Id.* at p. 1376.) On appeal, the court found that there was insufficient evidence to support jurisdiction under section 300, subdivision (c) despite the fact that the parents’ fighting caused the minor to experience “upset, confusion and gastrointestinal distress” and to express “deep dislike and fear” of his father. (*Id.* at pp. 1277-1380.) The court noted that the evidence did not show that the child was “seriously emotionally disturbed or that he was in substantial danger of suffering serious emotional damage,” because there was no psychological testimony to establish emotional damage, the minor was healthy and was doing well in school. (*Id.* at p. 1376.)

As the court in *In re Alexander K.* (1993) 14 Cal.App.4th 549, 559, noted about the requirements for jurisdiction under subdivision (c), “It is clear from the overall scheme that the parental conduct branch of subdivision (c) seeks to protect against *abusive* behavior that results in severe emotional damage. We are not talking about run-of-the-mill flaws in parenting styles—we are talking about abusive, neglectful and/or exploitive conduct toward a child which causes any of the serious symptoms identified in the statute.”

Here, the evidence presented to support jurisdiction under section 300, subdivision (c) was that Father and Mother had verbal arguments in the presence of the children and were at times, under the influence of alcohol while arguing. There is no substantial evidence that those arguments were seriously harmful to the children’s emotional wellbeing. The evidence demonstrates that Father confronted Mother about her methamphetamine use, and that Mother was aggressive when he tried to stop her from drinking beer during her pregnancy; however, other than this, the evidence does not describe the content of the verbal arguments. There is no evidence in the record that the parents’ arguments included name-calling or threats of physical violence.

Abuse within the context of section 300, subdivision (c) means “ ‘to ill-use or maltreat, to injure, wrong or hurt.’ [Citation.] . . . Persons of common intelligence would not have to guess whether someone was maltreating their child to the point of causing severe emotional harm.” (*In re Alexander K.*, *supra*, 14 Cal.App.4th at p. 559.) Based on the record, the parents’ arguments in this case can be seen as “run-of-the-mill flaws” in parenting rather than abusive or neglectful conduct towards the children justifying jurisdiction under section 300, subdivision (c). (*Ibid.*)

In addition, the evidence in the present case does not demonstrate that the children were suffering or were at risk of suffering emotional harm. At the time of the jurisdictional hearing, both children were developmentally on target. U.S. was well-behaved, and V.S. was a happy baby. There was no evidence that the parental arguments

that formed the basis of the section 300, subdivision (c) allegations affected the children in any way. Neither of the children showed fear of their parents, nor was there evidence that they experienced emotional disturbance as a result of the arguments. On the contrary, the children were having positive visits and were bonding with their parents. The Department did not express concern that the parents' mental health or history could potentially cause future emotional harm to the children.

In conclusion, there is no evidence that the verbal arguments between the parents in this case constituted “. . . abusive, neglectful and/or exploitive conduct . . .” toward V.S. and U.S. (*In re Alexander K.*, *supra*, 14 Cal.App.4th at p. 559.) Nor was there evidence that the verbal arguments caused the children to suffer or placed them at substantial risk of suffering “serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others,” as is required for jurisdiction under section 300, subdivision (c).

III. DISPOSITION

The order dated October 18, 2018 is modified to strike the true findings supporting jurisdiction under section 300, subdivision (c), and is otherwise affirmed.

Greenwood, P.J.

WE CONCUR:

Premo, J.

Elia, J.

In re. U.S. et al.; DFCS v. I.G.
No. H046308